

Title 24-A: MAINE INSURANCE CODE

Chapter 57: DELINQUENT INSURERS

Table of Contents

Subchapter 1. REHABILITATION AND LIQUIDATION.....	5
Section 4351. SCOPE OF PROVISIONS.....	5
Section 4352. SHORT TITLE.....	5
Section 4353. DEFINITIONS.....	5
Section 4354. JURISDICTION OF DELINQUENCY PROCEEDINGS; VENUE; EXCLUSIVENESS OF REMEDY; APPEAL.....	9
Section 4355. JURISDICTION OVER RELATED PERSONS AND TRANSACTIONS.....	10
Section 4356. GROUNDS FOR REHABILITATION OF DOMESTIC INSURER OR DOMICILED ALIEN INSURER.....	10
Section 4357. GROUNDS FOR LIQUIDATION OF DOMESTIC INSURER OR DOMICILED ALIEN INSURER.....	12
Section 4358. GROUND FOR CONSERVATION, FOREIGN AND ALIEN INSURERS.....	13
Section 4359. GROUNDS FOR ANCILLARY LIQUIDATION, FOREIGN AND ALIEN INSURERS.....	13
Section 4360. COMMENCEMENT OF PROCEEDING.....	13
Section 4361. SERVICE OF PROCESS.....	14
Section 4362. INJUNCTIONS.....	14
Section 4362-A. DISSOLUTION OF DOMESTIC INSURER.....	15
Section 4363. UNIFORM INSURERS LIQUIDATION ACT; SEVERABILITY; INTERPRETATION.....	15
Section 4364. CONDUCT OF DELINQUENCY PROCEEDINGS AGAINST DOMESTIC INSURERS AND CERTAIN ALIEN INSURERS.....	15
Section 4365. CONDUCT OF DELINQUENCY PROCEEDINGS AGAINST FOREIGN INSURERS.....	16
Section 4366. CLAIMS OF NONRESIDENTS AGAINST DOMESTIC INSURERS.....	17
Section 4367. CLAIMS AGAINST FOREIGN INSURERS.....	18
Section 4368. FORM OF CLAIM; NOTICE; HEARING.....	18
Section 4369. ATTACHMENT AND GARNISHMENT OF ASSETS.....	19
Section 4370. LIMITATIONS ON APPOINTMENT OF RECEIVER; ACTION BY JUDGMENT CREDITOR.....	19
Section 4371. DEPOSIT OF MONIES.....	19
Section 4372. EXEMPTION FROM FEES.....	20
Section 4373. ESCROWING ON PLEDGE OF ASSETS.....	20
Section 4374. TERMINATION OF REHABILITATION.....	20
Section 4375. PROHIBITED AND VOIDABLE TRANSFERS, LIENS (REPEALED).....	20
Section 4375-A. VOIDABLE PROPERTY TRANSFERS AND LIENS.....	20
Section 4376. DATE RIGHTS FIXED ON LIQUIDATION.....	25

Section 4377. TIME TO FILE CLAIMS.....	25
Section 4378. ALLOWANCE OF CONTINGENT AND OTHER CLAIMS.....	25
Section 4379. PRIORITIES IN DISTRIBUTION OF ASSETS.....	26
Section 4380. SUBORDINATION OF CLAIMS FOR NONCOOPERATION.....	28
Section 4381. OFFSETS.....	28
Section 4382. REPORT AND PETITION FOR ASSESSMENT.....	29
Section 4383. ORDER AND LEVY OF ASSESSMENT.....	29
Section 4384. ASSESSMENT PRIMA FACIE CORRECT; NOTICE; PAYMENT; PROCEEDINGS TO COLLECT.....	30
Section 4385. FEDERAL RECEIVERSHIP.....	31
Section 4386. APPLICATION FOR APPROVAL.....	31
Section 4387. QUALIFIED FINANCIAL CONTRACTS.....	32
Subchapter 2. SUMMARY PROCEEDINGS.....	35
Section 4401. SUMMARY PROCEEDINGS; SUPERINTENDENT'S CORRECTIVE ORDERS AUTHORIZED.....	35
Section 4402. -- APPEAL FROM SUPERINTENDENT'S ORDER.....	35
Section 4403. -- ENFORCEMENT, PENALTY.....	36
Section 4404. -- SEIZURE UNDER COURT ORDER.....	36
Section 4405. -- SEIZURE UNDER THE SUPERINTENDENT'S ORDER.....	37
Section 4406. -- CONDUCT OF HEARINGS, BOTH ADMINISTRATIVE AND BY THE COURT, IN SUMMARY PROCEEDINGS.....	37
Section 4407. -- PENALTY FOR REFUSAL TO DELIVER PROPERTY, ETC.....	38
Subchapter 3. MAINE INSURANCE GUARANTY ASSOCIATION.....	38
Section 4431. SHORT TITLE.....	38
Section 4432. PURPOSE.....	38
Section 4433. SCOPE.....	38
Section 4434. CONSTRUCTION.....	40
Section 4435. DEFINITIONS.....	40
Section 4436. CREATION OF THE ASSOCIATION.....	42
Section 4437. BOARD OF DIRECTORS.....	42
Section 4438. POWERS AND DUTIES OF THE ASSOCIATION.....	42
Section 4439. PLAN OF OPERATION.....	45
Section 4440. ASSESSMENT OF MEMBER INSURERS.....	46
Section 4440-A. SPECIAL ASSESSMENT.....	48
Section 4440-B. ASSESSMENT OF EXCESS INSURERS (REPEALED).....	49
Section 4441. DUTIES AND POWERS OF THE SUPERINTENDENT.....	49
Section 4442. EFFECT OF PAID CLAIMS.....	50
Section 4443. NONDUPLICATION OF RECOVERY.....	50
Section 4444. PREVENTION OF INSOLVENCIES.....	51
Section 4445. EXAMINATION OF THE ASSOCIATION.....	52
Section 4446. TAX EXEMPTION.....	52

Section 4447. RECOGNITION OF ASSESSMENT IN RATES.....	52
Section 4448. IMMUNITY.....	52
Section 4449. STAY OF PROCEEDINGS; REOPENING OF DEFAULT JUDGMENTS.....	52
Section 4450. TERMINATION OF ASSOCIATION.....	53
Section 4451. ADVERTISING RESTRICTIONS.....	53
Section 4452. REPORT TO LEGISLATURE.....	54

Maine Revised Statutes
Title 24-A: MAINE INSURANCE CODE
Chapter 57: DELINQUENT INSURERS

Subchapter 1: REHABILITATION AND LIQUIDATION

§4351. SCOPE OF PROVISIONS

The applicable provisions of this chapter shall apply as to: [1969, c. 132, §1 (NEW).]

1. All insurers authorized to transact insurance in this State;

[1969, c. 132, §1 (NEW) .]

2. All insurers having policyholders resident in this State;

[1969, c. 132, §1 (NEW) .]

3. All insurers against whom a claim under an insurance contract may arise in this State;

[1969, c. 132, §1 (NEW) .]

4. All persons in process of organization, or holding themselves out as organizing, or proposing to organize in this State for the purpose of becoming an insurer;

[2001, c. 88, §10 (AMD) .]

5. All other persons as to whom such provisions are otherwise expressly made applicable by law; and

[2001, c. 88, §10 (AMD) .]

6. Health maintenance organizations, which are considered insurers for the purposes of this subchapter and subchapter II.

[2001, c. 88, §11 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 2001, c. 88, §§10,11 (AMD).

§4352. SHORT TITLE

This chapter constitutes and may be cited as the "Insurance Rehabilitation and Liquidation Law."

[1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§4353. DEFINITIONS

For the purposes of this chapter: [1969, c. 132, §1 (NEW).]

1. "Insurer," in addition to persons so defined under section 4, includes also persons purporting to be insurers, or organizing or holding themselves out as organizing in this State for the purpose of becoming an insurer.

[1969, c. 132, §1 (NEW) .]

2. "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to sections 4351 to 4385 for the purpose of conserving, rehabilitating, reorganizing or liquidating the insurer, or the proceedings authorized by sections 4401 to 4407.

[1969, c. 132, §1 (NEW) .]

3. "State" has the meaning ascribed in section 7.

[1969, c. 132, §1 (NEW) .]

4. "Domiciliary state" means the state in which an insurer is incorporated or organized, or as to an alien insurer, the state in which, at the commencement of delinquency proceedings the larger amount of the insurer's assets are held in trust or on deposit for the benefit of policyholders and creditors in the United States of America.

[1969, c. 132, §1 (NEW) .]

5. "Ancillary state" means any state other than a domiciliary state.

[1969, c. 132, §1 (NEW) .]

6. "Reciprocal state" means any state other than this State in which in substance and effect the uniform insurers liquidation act, as defined in section 4363, is in force, including provisions requiring that the Insurance Superintendent or equivalent insurance supervisory official be the receiver of a delinquent insurer, and in which effective provisions exist for avoidance of fraudulent conveyances and unlawful preferential transfers.

[1973, c. 585, §12 (AMD) .]

7. "Foreign country" means territory not in any state.

[1969, c. 132, §1 (NEW) .]

8. "Impairment" exists as to a stock insurer when the insurer's assets do not at least equal the sum of its liabilities and its paid-in capital stock; and as to a mutual insurer when the insurer's assets do not at least equal the sum of the insurer's liabilities and the minimum basic surplus required under this Title to be maintained for authority to transact the kinds of insurance transacted.

[1969, c. 132, §1 (NEW) .]

9. "Insolvency" exists when the insurer fails to meet its obligations as they mature or when a stock insurer's assets are less than the sum of its liabilities and the minimum paid-in capital stock required for its authority to transact insurance in this State; or when a mutual insurer's assets are less than the sum of its liabilities and the minimum basic surplus required to be maintained by the insurer under this Title for authority to transact the kinds of insurance transacted; or as otherwise expressly provided in this Title.

[1969, c. 132, §1 (NEW) .]

10. "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons; and as to such specifically encumbered property, the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby. Assets held in trust or on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States of America are deemed general assets.

[1969, c. 132, §1 (NEW) .]

11. "Preferred claim" means any claim accorded priority of payment from the insurer's general assets under applicable law.

[1969, c. 132, §1 (NEW) .]

12. "Special deposit claim" means any claim secured by deposit made under statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

[1969, c. 132, §1 (NEW) .]

13. "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets through judicial process and not invalidated.

[1969, c. 132, §1 (NEW) .]

14. "Receiver" means receiver, liquidator, rehabilitator or conservator, as context requires.

[1969, c. 132, §1 (NEW) .]

15. "Creditor" means a person having a claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed or contingent.

[1969, c. 132, §1 (NEW) .]

16. Fair consideration. "Fair consideration" is given for property or an obligation:

A. When in exchange for that property or obligation, as a fair equivalent for the property or obligation and in good faith, property is conveyed, services are rendered, an obligation is incurred or an antecedent debt is satisfied; or [1991, c. 828, §25 (NEW) .]

B. When that property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained. [1991, c. 828, §25 (NEW) .]

[1991, c. 828, §25 (NEW) .]

17. Guaranty association. "Guaranty association" means the Maine Insurance Guaranty Association established by chapter 57, subchapter III, the Life and Health Insurance Guaranty Association established by chapter 62 and any other similar entity created by the laws of this State for the payment of claims of insolvent insurers.

[1991, c. 828, §25 (NEW) .]

18. Foreign guaranty association. "Foreign guaranty association" means a guaranty association created by the legislature of any other state.

[1991, c. 828, §25 (NEW) .]

19. Transfer. "Transfer" includes the sale and every other direct or indirect method of disposing of or of parting with property or an interest in property or with the possession of property or of fixing a lien upon property or upon an interest in property, absolutely or conditionally, voluntarily or by or without judicial proceedings. The retention of a security interest in property delivered to a debtor is a transfer suffered by the debtor.

[1991, c. 828, §25 (NEW) .]

20. Netting agreement. "Netting agreement" means:

A. A contract or agreement, including terms and conditions incorporated by reference into a contract or agreement, including a master agreement, that documents one or more transactions between the parties to the agreement for or involving one or more qualified financial contracts and that provides for the netting, liquidation, setoff, termination, acceleration or closeout under or in connection with one or more qualified financial contracts or present or future payment or delivery obligations or payment or delivery entitlements under one or more qualified financial contracts, including liquidation or close-out values relating to such obligations or entitlements among the parties to the netting agreement; [2011, c. 107, §1 (NEW) .]

B. Any master agreement or bridge agreement for one or more master agreements described in paragraph A; or [2011, c. 107, §1 (NEW) .]

C. Any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement described in paragraph A or B. [2011, c. 107, §1 (NEW) .]

A contract or agreement described in paragraph A or B relating to agreements or transactions that are not qualified financial contracts is considered to be a netting agreement only with respect to those agreements or transactions that are qualified financial contracts. For the purposes of this subsection, a master agreement together with all schedules, confirmations, definitions and addenda to the master agreement and transactions under any master agreement, is treated as one netting agreement.

[2011, c. 107, §1 (NEW) .]

21. Qualified financial contract. "Qualified financial contract" means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement and any similar agreement that the superintendent determines to be a qualified financial contract.

A. "Commodity contract" means:

- (1) A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade or contract market under the federal Commodity Exchange Act or a board of trade outside the United States;
- (2) An agreement that is subject to regulation under Section 23 of the federal Commodity Exchange Act and that is commonly known to the commodities trade as a margin account, margin contract, leverage account or leverage contract;
- (3) An agreement or transaction that is subject to regulation under Section 4c(b) of the federal Commodity Exchange Act and that is commonly known to the commodities trade as a commodity option;
- (4) Any combination of the agreements or transactions referred to in this paragraph; or

(5) Any option to enter into an agreement or transaction referred to in this paragraph. [2011, c. 107, §2 (NEW).]

B. "Forward contract," "repurchase agreement," "securities contract" and "swap agreement" have the meanings set forth in the Federal Deposit Insurance Act, 12 United States Code, Section 1821(e)(8)(D), as amended from time to time. [2011, c. 107, §2 (NEW).]

[2011, c. 107, §2 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 828, §25 (AMD). 2011, c. 107, §§1, 2 (AMD).

§4354. JURISDICTION OF DELINQUENCY PROCEEDINGS; VENUE; EXCLUSIVENESS OF REMEDY; APPEAL

1. The Superior Court has original jurisdiction of delinquency proceedings under this chapter, and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of this chapter. A delinquency proceeding may not be commenced under this chapter by anyone other than the superintendent.

[1991, c. 828, §26 (AMD) .]

2. The venue of delinquency proceedings against a domestic insurer shall be in the county in this State of the insurer's principal place of business; or, if the principal place of business is located in another state, in any county in this State selected by the superintendent for the purpose. The venue of proceedings against foreign insurers shall be in any county in this State selected by the superintendent for the purpose.

[1973, c. 585, §12 (AMD) .]

3. At any time after commencement of a proceeding the superintendent or any other party may apply to the court for an order changing the venue of, and removing, the proceeding to any other county of this State in which the proceeding may most conveniently, economically and efficiently be conducted.

[1973, c. 585, §12 (AMD) .]

4. No court shall have jurisdiction to entertain, hear or determine any petition or complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation or receivership of any insurer, or for an injunction or restraining order or other relief preliminary, incidental or relating to such proceedings, other than in accordance with this chapter.

[1969, c. 132, §1 (NEW) .]

5. An appeal shall lie to the Supreme Judicial Court from any court granting or refusing rehabilitation, liquidation, conservation or receivership and from every order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 828, §26 (AMD).

§4355. JURISDICTION OVER RELATED PERSONS AND TRANSACTIONS

1. A court of this State, in which an order of rehabilitation or liquidation has been entered in delinquency proceedings against a domestic insurer or alien insurer domiciled in this State, has jurisdiction also over persons, served as provided in subsection 2, in an action brought by the insurer's receiver on or arising out of such obligation or relationship, as follows:

A. Persons obligated to the insurer as a result of agency or brokerage or transactions between such persons and the insurer; [1969, c. 132, §1 (NEW).]

B. Reinsurers of the insurer, and their representatives; [1991, c. 828, §27 (AMD).]

C. Past or present officers, managers, trustees, directors, organizers and promoters of the insurer, and other persons in positions of similar responsibility with the insurer; [1991, c. 828, §27 (AMD).]

D. Persons served who are or were at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; and [1991, c. 828, §28 (NEW).]

E. Persons served who are obligated to the insurer in any way whatsoever, in any action on or incident to the obligation. [1991, c. 828, §28 (NEW).]

[1991, c. 828, §§27, 28 (AMD) .]

2. As to those of such persons who are in this State, personal service of process shall be made as in other civil actions. As to those of such persons who cannot be found in this State at the time process is to be served, personal service of process shall be made thereon by a public officer of the jurisdiction in which such person may be found, in the same manner as personal service of process is required to be made within this State under the laws of this State; and the affidavit or certificate under oath setting forth the facts of such service shall be filed in the court in this State in which the action is pending.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1991, c. 828, §27 (AMD). 1991, c. 828, §28 (AMD).

§4356. GROUNDS FOR REHABILITATION OF DOMESTIC INSURER OR DOMICILED ALIEN INSURER

The superintendent may petition for an order directing him to rehabilitate a domestic insurer or an alien insurer domiciled in this State on any one or more of the following grounds: [1973, c. 585, §12 (AMD) .]

1. On any ground for liquidation of the insurer under section 4357, if the superintendent believes rehabilitation possible without substantial increase of risk to creditors, policyholders or the public;

[1973, c. 585, §12 (AMD) .]

2. If the insurer is in unsound condition, or is using or has been subject to, such methods and practices in conduct of its business as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, or creditors, or the public;

[1969, c. 132, §1 (NEW) .]

3. If the insurer's solvency is endangered by illegal action;

[1969, c. 132, §1 (NEW) .]

4. For material falsification of the insurer's records, reports or financial condition;

[1969, c. 132, §1 (NEW) .]

5. If the superintendent finds after hearing that any individual exercising executive power with respect to or otherwise materially influencing or controlling the insurer, directly or indirectly, is dishonest or untrustworthy in matters affecting the insurer, and has not been or cannot effectively and permanently be removed from such power, influence or control;

[1973, c. 585, §12 (AMD) .]

6. For unlawful concealment or removal by the insurer of any of its records or assets;

[1969, c. 132, §1 (NEW) .]

7. For failure of the insurer, or its parent corporation, or subsidiary or affiliated person controlled by the insurer, to submit its books, accounts, records and affairs to the reasonable inspection or examination of the superintendent or his examiner as authorized under this Title; or if any individual exercising any executive authority in the affairs of the insurer or parent corporation or subsidiary or affiliated person has refused to be examined under oath, by the superintendent or his examiner thereunto duly authorized, whether within this State or otherwise, concerning the pertinent affairs of the insurer or parent corporation or subsidiary or affiliated person, or if examined under oath refuses to divulge pertinent information reasonably known to him; or for failure of officers, employees and other representatives of the insurer or parent corporation or subsidiary or affiliated person to comply promptly with the reasonable requests of the superintendent or his examiner for the purposes of and during the conduct of any such examination;

[1973, c. 585, §12 (AMD) .]

8. That a deadlock exists in the insurer's board of directors relative to the general management of the insurer's affairs, that the insurer's stockholders or members, as to a mutual insurer, are unable to break the deadlock, and that the same threatens irreparable injury to the insurer or its creditors or its policyholders or to the public;

[1969, c. 132, §1 (NEW) .]

9. If the insurer has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge or consolidate substantially its entire property or business in that of any other insurer, without first having obtained the written approval of the superintendent as required under this Title;

[1973, c. 585, §12 (AMD) .]

10. If the controlling stock of the insurer has been transferred to others without compliance with the requirements of section 3476 (acquisition of controlling stock), except where such transfer is by testamentary bequest or inheritance;

[1969, c. 132, §1 (NEW) .]

11. If the insurer has willfully violated its charter or a law of this State, or has willfully exceeded its corporate powers;

[1969, c. 132, §1 (NEW) .]

12. If the insurer has requested or consented to rehabilitation by vote or written authorization of a majority of its directors or stockholders, or members, as to mutual insurers;

[2013, c. 238, Pt. A, §32 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

13. If the insurer has failed to pay any valid judgment against it within 30 days after the same became final; or

[2013, c. 238, Pt. A, §32 (AMD); 2013, c. 238, Pt. A, §34 (AFF) .]

14. If a violation of section 222, subsection 4-C prevents the superintendent from sufficiently understanding the enterprise risk to the insurer posed by its affiliates or by its insurance holding company system.

[2013, c. 238, Pt. A, §33 (NEW); 2013, c. 238, Pt. A, §34 (AFF) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2013, c. 238, Pt. A, §§32, 33 (AMD). 2013, c. 238, Pt. A, §34 (AFF).

§4357. GROUNDS FOR LIQUIDATION OF DOMESTIC INSURER OR DOMICILED ALIEN INSURER

The superintendent may apply to the court for an order appointing him as receiver, if his appointment as receiver is not then in effect, and directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this State, whether or not there has been a prior order directing him to rehabilitate the insurer, upon any one or more of the following grounds: [1973, c. 585, §12 (AMD) .]

1. That the insurer has failed to cure an impairment of surplus or capital or assets within the time allowed therefor by any lawful order of the superintendent;

[1973, c. 585, §12 (AMD) .]

2. That the insurer is insolvent, or has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute or is the object, in this State or elsewhere, of any action of proceeding to liquidate its business or affairs or to dissolve its corporate charter or to procure the appointment of a receiver, trustee, custodian or sequestrator under any law except this Title. This provision shall not apply as to the conversion of a stock insurer to an ordinary business corporation as authorized under section 3473 or to voluntary dissolution of the insurer pursuant to section 3484;

[1969, c. 132, §1 (NEW) .]

3. That the insurer has ceased for a period of one year to transact insurance business;

[1969, c. 132, §1 (NEW) .]

4. If a proposed insurer has not completed its organization and obtained a certificate of authority as an insurer within the time allowed therefor under any applicable law;

[1969, c. 132, §1 (NEW) .]

5. That efforts to rehabilitate the insurer and remove the causes or adverse effects thereof for which rehabilitation was instituted have failed despite all reasonable efforts by the superintendent, or cannot be continued without material increase of risk of loss to the insurer's creditors or policyholders; or

[1973, c. 585, §12 (AMD) .]

6. If the insurer has requested or consented to liquidation by vote or written authorization of a majority of its directors or stockholders, or members if a mutual insurer.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4358. GROUND FOR CONSERVATION, FOREIGN AND ALIEN INSURERS

The superintendent may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this State, of a foreign or alien insurer upon any of the applicable ground specified in sections 4356 or 4357, or upon the ground that the insurer's property has been sequestered in its domiciliary sovereignty or in any other sovereignty; or, in the case of an alien insurer that the insurer has failed to make good an impairment of its trusteed funds within the time required therefor by order of the superintendent. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4359. GROUNDS FOR ANCILLARY LIQUIDATION, FOREIGN AND ALIEN INSURERS

The superintendent may apply to the court for an order appointing him to liquidate the business of a foreign or alien insurer having assets, business or claims in this State upon the appointment in the domiciliary sovereignty of such insurer of a receiver, liquidator, conservator, rehabilitator or other officer by whatever name called for the purpose of liquidating the business of the insurer. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4360. COMMENCEMENT OF PROCEEDING

1. The superintendent shall commence a delinquency proceeding authorized under this chapter, the Attorney General representing him, by filing a petition in a court of proper jurisdiction praying for appointment of the superintendent as receiver of the insurer.

[1973, c. 585, §12 (AMD) .]

2. Upon the filing of the petition, the court shall issue an order directing the insurer to appear in court on the day fixed in the order and show cause why the petition should not be granted. Unless good cause is shown for a shorter period, the order shall require the insurer to so show cause not less than 15 or more than 30 days from date of the order.

[1969, c. 132, §1 (NEW) .]

3. The order to show cause and service thereof on the insurer shall constitute due and legal process and shall be in lieu of any other process otherwise provided by law.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4361. SERVICE OF PROCESS

A certified copy of any order to show cause issued under section 4360, and a copy of the petition upon which the same is made, must be served upon the insurer by delivering the same to its president, vice-president, secretary, treasurer, director or to its managing agent or attorney in fact, if a reciprocal insurer; or if no such officer or functionary can readily be found in this State, then such process may be served upon the insurer by service thereof upon the superintendent pursuant to section 421. [1997, c. 457, §51 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1997, c. 457, §51 (AMD).

§4362. INJUNCTIONS

1. Upon application by the superintendent for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

[1973, c. 585, §12 (AMD) .]

2. The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the superintendent or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

[1973, c. 585, §12 (AMD) .]

3. Notwithstanding any other provision of law, no bond shall be required of the superintendent as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4362-A. DISSOLUTION OF DOMESTIC INSURER

The superintendent, upon application for an order of liquidation of a domestic insurer for any of the reasons specified in section 4357 or at any time thereafter, may apply for an order of dissolution of the domestic insurer. Upon the filing of the application, the court shall issue an order directing the insurer to appear in court on the day fixed in the order and show cause why the application should not be granted. The order to show cause and notice thereof shall conform to the requirements applicable to an order to show cause set forth in section 4360, subsections 2 and 3, and section 4361. Unless cause is shown why the application should not be granted, the court, after hearing, shall order that the corporate existence of such domestic insurer be dissolved. [1983, c. 603, §1 (NEW).]

SECTION HISTORY

1983, c. 603, §1 (NEW).

§4363. UNIFORM INSURERS LIQUIDATION ACT; SEVERABILITY; INTERPRETATION

1. This section, section 4353 (definitions), and sections 4364 to 4369 comprise and may be cited as the Uniform Insurers Liquidation Act.

[1969, c. 132, §1 (NEW) .]

2. If any provision of the Uniform Insurers Liquidation Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable.

[1969, c. 132, §1 (NEW) .]

3. This Uniform Insurers Liquidation Act shall be so interpreted as to effectuate its general purpose to make uniform the laws of those states which enact it. To the extent that its provisions, when applicable, conflict with other provisions of this Title, the Uniform Insurers Liquidation Act shall control.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§4364. CONDUCT OF DELINQUENCY PROCEEDINGS AGAINST DOMESTIC INSURERS AND CERTAIN ALIEN INSURERS

1. Whenever under this chapter a receiver is to be appointed in delinquency proceedings for an insurer, the court shall appoint the superintendent as such receiver. The court shall order the superintendent forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

[1973, c. 585, §12 (AMD) .]

2. As a domiciliary receiver, the superintendent shall be vested by operation of law with the title to all of the property, contracts and rights of action and all of the books and records of the insurer, wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer or to liquidate the United States branch of an alien insurer domiciled in this State, and he shall have the right to

recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this State as to assets located in this State.

[1973, c. 585, §12 (AMD) .]

3. The filing or recording of the order directing possession to be taken, or a certified copy thereof, in any office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale or other evidence of title duly filed or recorded.

[1969, c. 132, §1 (NEW) .]

4. The superintendent as domiciliary receiver shall be responsible for the proper administration of all assets coming into his possession or control. The court may at any time require a bond from him or his deputies, if deemed desirable for the protection of such assets.

[1973, c. 585, §12 (AMD) .]

5. Upon taking possession of the assets of an insurer, the domiciliary receiver shall immediately proceed to conduct the business of the insurer or to take such steps as are authorized by this chapter for the purpose of rehabilitating, liquidating or conserving the affairs or assets of the insurer.

[1969, c. 132, §1 (NEW) .]

6. In connection with delinquency proceedings, the superintendent may appoint one or more special deputy superintendents to act for him and he may employ such counsel, clerks and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver and shall be paid out of the funds or assets of the insurer. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.

[1973, c. 585, §12 (AMD) .]

7. During such receivership the superintendent shall file in the court, at regular intervals not less frequently than quarterly, his true reports in summary form of the insurer's affairs under the receivership, and of progress being made in accomplishing the objectives of the receivership. All such reports, together with such additional or special reports as the court may reasonably require, shall be subject to review by the court; and all actions of the receiver therein reported shall be subject to the court's approval, but the court shall not withhold approval or disapprove any such action unless found by the court after a hearing thereon in open court to be unlawful, or arbitrary, or capricious.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4365. CONDUCT OF DELINQUENCY PROCEEDINGS AGAINST FOREIGN INSURERS

1. Whenever under this chapter an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this State, the court shall appoint the superintendent as ancillary receiver. The superintendent shall file a petition requesting the appointment on the grounds set forth in sections 4358 or 4359:

A. If he finds that there are sufficient assets of the insurer located in this State to justify the appointment of an ancillary receiver, or [1969, c. 132, §1 (NEW).]

B. If 10 or more persons resident in this State having claims against such insurer file a petition with the superintendent requesting the appointment of such ancillary receiver. [1973, c. 585, §12 (AMD).]

[1973, c. 585, §12 (AMD) .]

2. The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer located in this State and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this State. He shall also be entitled to recover the other assets of the insurer located in this State, except that upon the appointment of an ancillary receiver in this State, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this State, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this State.

[1969, c. 132, §1 (NEW) .]

3. The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this State to recover any assets of such insurer to which he may be entitled under the laws of this State.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§4366. CLAIMS OF NONRESIDENTS AGAINST DOMESTIC INSURERS

1. In a delinquency proceeding begun in this State against a domestic insurer, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver, but claimants residing in foreign countries or in states not reciprocal states must file claims in this State. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

[1991, c. 828, §29 (AMD) .]

2. Controverted claims belonging to claimants residing in reciprocal states may either:

A. Be proved in this State, or [1969, c. 132, §1 (NEW).]

B. If ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this State, as provided in section 4367 with respect to ancillary proceedings in this State, the final allowance of such

claim by the courts in the ancillary state shall be accepted in this State as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state. [1969, c. 132, §1 (NEW).]

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1991, c. 828, §29 (AMD).

§4367. CLAIMS AGAINST FOREIGN INSURERS

1. In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this State may file claims either with the ancillary receiver, if any, appointed in this State, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

[1969, c. 132, §1 (NEW) .]

2. Controverted claims belonging to claimants residing in this State may either:

A. Be proved in the domiciliary state as provided by the law of that state, or [1969, c. 132, §1 (NEW) .]

B. If ancillary proceedings have been commenced in this State, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this State, he shall file his claim with the ancillary receiver and shall give notice in writing to the receiver in the domiciliary state, either by registered or certified mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based and the priorities asserted, if any. If the domiciliary receiver within 30 days after the giving of such notice shall give notice in writing to the ancillary receiver and to the claimant, either by registered or certified mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this State involving adjudication of the claim. The final allowance of the claim by the courts of this State shall be accepted as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this State. [1969, c. 132, §1 (NEW) .]

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§4368. FORM OF CLAIM; NOTICE; HEARING

1. All claims against an insurer against which delinquency proceedings have been begun shall set forth in reasonable detail the amount of the claim, or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant or someone authorized to act on his behalf and having knowledge of the facts, and shall be supported by such documents as may be material thereto.

[1969, c. 132, §1 (NEW) .]

2. All claims filed in this State shall be filed with the receiver, whether domiciliary or ancillary, in this State, on or before the last date for filing as specified in this chapter.

[1969, c. 132, §1 (NEW) .]

3. Within 10 days of the receipt of any claim, or within such further period as the court may fix for good cause shown, the receiver shall report the claim to the court, specifying in such report his recommendation with respect to the action to be taken thereon. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

[1969, c. 132, §1 (NEW) .]

4. At the hearing, all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§4369. ATTACHMENT AND GARNISHMENT OF ASSETS

During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this State against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding. [1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§4370. LIMITATIONS ON APPOINTMENT OF RECEIVER; ACTION BY JUDGMENT CREDITOR

No order, judgment or decree enjoining, restraining or interfering with the prosecution of the business of any insurer or for the appointment of a temporary or permanent receiver of a domestic insurer shall be made or granted otherwise than upon the petition of the superintendent represented by the Attorney General as provided in this chapter. [1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4371. DEPOSIT OF MONIES

The monies collected by the superintendent in a proceeding under this chapter shall be from time to time deposited in one or more state or national banks, savings banks or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this State, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this State. The superintendent may in his discretion deposit such monies or any part thereof in a national bank or trust company as a trust fund. [1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4372. EXEMPTION FROM FEES

The superintendent shall not be required to pay any fee to any public officer in this State for service of process, filing, recording, issuing a transcript or certificate or authenticating any paper or instrument pertaining to the exercise by the superintendent of any of the powers or duties conferred upon him under this chapter, whether or not such paper or instrument be executed by the superintendent or his deputies, employees or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the superintendent, or with the subsequent conduct of such action or proceeding. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4373. ESCROWING ON PLEDGE OF ASSETS

For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this chapter, the superintendent may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property, whether real, personal or mixed, of such insurer, and the superintendent subject to the approval of the court shall have power to take any and all other action necessary and proper to consummate any such loan and to provide for the repayment thereof. The superintendent shall be under no obligation personally or in his official capacity to repay any loan made pursuant to this section. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4374. TERMINATION OF REHABILITATION

If at any time the court finds, after hearing in open court, upon petition of the superintendent or of the insurer or of his own motion, that the objectives of an order to rehabilitate a domestic insurer or an alien insurer domiciled in this State have been accomplished, and that the insurer can be returned to its own management without further jeopardy to the insurer and its creditors or policyholders or stockholders or to the public, the court may, upon a full report and accounting by the superintendent relative to the conduct of the insurer's affairs during the rehabilitation and of the insurer's current financial condition, terminate the rehabilitation and by order return the insurer, its assets and affairs, to the insurer's management. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4375. PROHIBITED AND VOIDABLE TRANSFERS, LIENS

(REPEALED)

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 828, §30 (RP).

§4375-A. VOIDABLE PROPERTY TRANSFERS AND LIENS

1. Fraudulent transfers prior to petition. Fraudulent transfers prior to petition are governed by this subsection.

A. A transfer made or suffered and an obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter that is fraudulent according to the terms of this section may be avoided by the receiver except as to a person who in good faith is a purchaser, lienor or obligee for a present fair equivalent value, but any purchaser, lienor or obligee who in good faith has given a consideration less than fair for such transfer, lien, or obligation may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver succeeds to and may enforce the rights of the purchaser, lienor or obligee. [1991 , c . 828 , §31 (NEW) .]

B. The determination of when a transfer is made is governed by the following rules.

- (1) A transfer of property other than real property is deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract may become superior to the rights of the transferee.
- (2) A transfer of real property is deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer may obtain rights superior to the rights of the transferee.
- (3) A transfer that creates an equitable lien may not be deemed to be perfected if there are available means by which a legal lien could be created.
- (4) Any transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.
- (5) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy, but does not include liens that under applicable law are given a special priority over other liens that are prior in time.
- (6) A lien obtainable by legal or equitable proceedings may become superior to the rights of a transferee, or a purchaser may obtain rights superior to the rights of a transferee within the meaning of this paragraph if those consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials, but not if any acts subsequent to the obtaining of the lien or subsequent to the purchase require the agreement or concurrence of any 3rd party or require any further judicial action or ruling.
- (7) The provisions of this paragraph apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers. [1991 , c . 828 , §31 (NEW) .]

C. Any transaction of the insurer with a reinsurer is deemed fraudulent and may be avoided by the receiver under paragraph A if:

- (1) The transaction consists of the termination, adjustment or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction unless the reinsurer gives a present fair equivalent value for the release; and
- (2) Any part of the transaction takes place within one year prior to the date of filing of the petition through which the receivership is commenced. [1991 , c . 828 , §31 (NEW) .]

D. A person receiving any property from the insurer or a benefit from possession or use of the property that is fraudulently transferred is personally liable for the value of the preference and shall account to the liquidator. [1991, c. 828, §31 (NEW).]

[1991, c. 828, §31 (NEW) .]

2. Fraudulent transfers after petition. Fraudulent transfers after petition are governed by this subsection.

A. After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if the transfer was not made for a present fair equivalent value, then it is valid only to the extent of the present consideration actually paid for the property, for which amount the transferee has a lien on the property so transferred. Constructive notice of the commencement of a proceeding in rehabilitation or liquidation is deemed to be given upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the register of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state is not impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale. [1991, c. 828, §31 (NEW).]

B. After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted the following rules apply.

(1) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then the transfer is valid only to the extent of the present consideration actually paid, for which amount the transferee has a lien on the property so transferred.

(2) A person acting in good faith who is indebted to the insurer or holding property of the insurer may pay the indebtedness or deliver the property or any part of the property to the insurer with the same effect as if the petition were not pending.

(3) A person having actual knowledge of the pending rehabilitation or liquidation who effectuates a transfer of any of the property of the insurer or who benefits by the transfer is deemed not to act in good faith.

(4) A person asserting the validity of a transfer under this section has the burden of proof. Except as elsewhere provided in this section, a transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

[1991, c. 828, §31 (NEW).]

C. A person receiving any property from the insurer or a benefit from possession or use of the property that is fraudulently transferred under this subsection is personally liable for the value of the preference and shall account to the liquidator. [1991, c. 828, §31 (NEW).]

[1991, c. 828, §31 (NEW) .]

3. Voidable preferences. Voidable preferences and liens are governed by this subsection.

A. A preference is a transfer that is made or suffered by the insurer of any of the property of an insurer to or for the benefit of a creditor for or on account of an antecedent debt if the effect of the transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive and the transfer is made within one year before the filing of a successful petition for liquidation under this chapter or, if a liquidation order is entered while the insurer is already subject to

a rehabilitation order, if made or suffered within one year before the filing of the successful petition for rehabilitation or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter. [1991, c. 828, §31 (NEW).]

B. Any preference may be avoided by the liquidator if:

- (1) The insurer was insolvent at the time of the transfer;
- (2) The transfer was made within 4 months before the filing of the petition;
- (3) The creditor receiving it or to be benefitted by it or the creditor's agent had reasonable cause to believe that the insurer was insolvent or was about to become insolvent when the transfer was made; or
- (4) The creditor receiving it was an officer of the insurer or any employee or attorney or other person who was in fact in a position of comparable influence with the insurer whether or not that person held such a position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer, or any other person, firm, corporation, association or aggregation of persons with whom the insurer did not deal at arm's length. [1991, c. 828, §31 (NEW).]

C. Where the preference is voidable, the liquidator may recover the property or its value if it has been converted from any person who received or converted the property, except that, where a bona fide purchaser or lienor has given less than fair equivalent value, that person is deemed to have a lien upon the property to the extent of the consideration actually given. When a preference by way of lien or security interest is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title passes to the liquidator. [1991, c. 828, §31 (NEW).]

D. The determination of when a transfer is made is governed by subsection 1, paragraph B. [1991, c. 828, §31 (NEW).]

E. A transfer of property for or on account of a new and contemporaneous consideration, which is considered under subsection 1, paragraph B to be made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, has the same effect as a transfer for or on account of a new and contemporaneous consideration. [1991, c. 828, §31 (NEW).]

F. If any lien considered voidable under paragraph B is dissolved by the furnishing of a bond or other obligation, the surety that was indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this chapter that results in a liquidation order, the indemnifying transfer or lien is also voidable. [1991, c. 828, §31 (NEW).]

G. The property affected by any lien considered voidable under this subsection must be discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety must pass to the liquidator; except that, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that a conveyance be executed as may be proper or adequate to evidence the title of the liquidator. [1991, c. 828, §31 (NEW).]

H. The court has summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding must be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien. If the court finds that the value is less than the amount for which the property is held as

indemnity or the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment to the liquidator of its value as ascertained by the court within a reasonable time as fixed by the court. [1991, c. 828, §31 (NEW).]

I. The liability of the surety under a releasing bond or other like obligation must be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or, when the property is retained under paragraph H, to the extent of the amount paid to the liquidator. [1991, c. 828, §31 (NEW).]

J. If a creditor has been preferred and afterward in good faith gives the insurer further credit for property that becomes a part of the insurer's estate without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference that would otherwise be recoverable. [1991, c. 828, §31 (NEW).]

K. If, within 4 months before the filing of a successful petition for liquidation under this chapter or at any time in contemplation of a proceeding to liquidate an insurer, the insurer pays money or transfers property, directly or indirectly, to an attorney-at-law for services rendered or to be rendered, the transactions may be examined by the court on its own motion and must be examined by the court on petition of the liquidator and may be held valid only to the extent they are reasonable in amount as determined by the court. Any excess may be recovered by the liquidator for the benefit of the estate; except that, where the attorney is in a position of influence in the insurer or an affiliate of the insurer, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered is governed by the provisions of paragraph B, subparagraph (4). [1991, c. 828, §31 (NEW).]

L. An officer, manager, employee, shareholder, member, subscriber, attorney or any other person acting on behalf of the insurer who knowingly participates in giving any preference when that person has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. If the transfer was made within 4 months before the date of filing of a successful petition for liquidation, a presumption arises that there was reasonable cause to believe the insurer was or was about to become insolvent. [1991, c. 828, §31 (NEW).]

M. A person receiving any property from the insurer or a benefit from possession or use of the property as a preference voidable under this subsection is personally liable for the value of that preference and shall account to the liquidator. [1991, c. 828, §31 (NEW).]

N. Nothing in this subsection prejudices any other claim by the liquidator against any person. [1991, c. 828, §31 (NEW).]

[1991, c. 828, §31 (NEW) .]

4. Claims of holders of void or voidable rights. Claims of holders of void or voidable rights are governed by this subsection.

A. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment or encumbrance voidable under this section is not allowed unless the claimant surrenders the preference, lien, conveyance, transfer, assignment or encumbrance. If the avoidance is effected by a proceeding in which a final judgment is entered, the claim is not allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment; except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding. [1991, c. 828, §31 (NEW).]

B. A claim allowable under paragraph A by reason of the avoidance, whether voluntary or involuntary, of a preference, lien, conveyance, transfer, assignment or encumbrance may be filed as an excused late filing if filed within 30 days from the date of the avoidance or within any further time allowed by the court under paragraph A. [1991, c. 828, §31 (NEW).]

[1991, c. 828, §31 (NEW) .]

5. Negotiable instruments. Nothing in this section impairs the negotiability of currency or negotiable instruments.

[1991, c. 828, §31 (NEW) .]

SECTION HISTORY

1991, c. 828, §31 (NEW).

§4376. DATE RIGHTS FIXED ON LIQUIDATION

The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to this chapter with respect to the rights of claimants holding contingent claims. [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§4377. TIME TO FILE CLAIMS

1. If upon the entry of an order of liquidation under this chapter or at any time thereafter during liquidation proceedings the insurer is not clearly solvent, the court shall, upon hearing after such notice as it deems proper, make and enter an order adjudging the insurer to be solvent.

[1969, c. 132, §1 (NEW) .]

2. After the entry of the order of insolvency, regardless of any prior notice that may have been given to creditors, the superintendent shall notify all persons who may have claims against the insurer to file such claims with him, at a place and within the time specified in the notice, or that such claims shall be forever barred. The time specified in the notice shall be as fixed by the court for filing of claims and which shall be not less than 6 months after the entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4378. ALLOWANCE OF CONTINGENT AND OTHER CLAIMS

1. No contingent claim shall share in a distribution of assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to section 4377, except that such claims shall be considered, if properly presented, and may be allowed to share where:

A. The claim becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of the insurer, or [1969, c. 132, §1 (NEW).]

B. There is a surplus and the liquidation is thereafter conducted upon the basis that the insurer is solvent. [1969, c. 132, §1 (NEW).]

[1969, c. 132, §1 (NEW) .]

2. Where an insurer has been so adjudicated to be insolvent, any person who has a cause of action against an insured of the insurer, shall have the right to file a claim in the liquidation proceeding, regardless of the fact that the claim may be contingent, and the claim may be allowed:

A. If it may be reasonably inferred from the proof presented upon the claim that such person would be able to obtain a judgment upon such cause of action against such insured; and [1969, c. 132, §1 (NEW) .]

B. If such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claims against the insurer arising out of his cause of action other than those already presented can be made; and [1969, c. 132, §1 (NEW) .]

C. If the total liability of the insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation. [1969, c. 132, §1 (NEW) .]

[1969, c. 132, §1 (NEW) .]

3. No judgment against such an insurer, referred to in subsection 2, taken after the date of the entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, inquest or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceeding either of the liability of the insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

[1969, c. 132, §1 (NEW) .]

4. No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for the fixation of rights and liabilities as provided in section 4376 unless the claimant shall surrender his security to the liquidator and in which event the claim shall be allowed in the full amount for which it is valued.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW) .

§4379. PRIORITIES IN DISTRIBUTION OF ASSETS

The priorities in distribution of assets from the insurer's estate shall be in the order as shown in this section. The first \$50 of the amount allowed on each claim in the classes under subsections 2 to 6 shall be deducted from the claim and included in the class under subsection 8. Claims shall not be cumulated by assignment to avoid application on the \$50 deductible provision. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment thereof before claims of the next succeeding class receive any payment. No subclasses shall be established within any class: [1969, c. 132, §1 (NEW) .]

1. Administration costs. The costs and expenses of administration, including but not limited to the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees. Any provider or member claims for covered services under a health maintenance organization contract, including a point-of-service contract, incurred between the date a petition of liquidation is filed and the date coverage terminates may be treated as administration costs under this subsection.

[2001, c. 88, §12 (AMD) .]

2. Wages. Debts due to employees of the insurer, other than officers, for services performed, not to exceed \$1,000 to each employee and earned within 1 year immediately prior to the filing of the petition for liquidation. This priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of such employees.

[1969, c. 132, §1 (NEW) .]

3. Loss claims. All claims under policies for losses incurred, including 3rd-party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property that are not under policies, except the first \$200 of losses otherwise payable to any claimant under this subsection. All claims under life insurance policies and annuity contracts, whether for death proceeds, annuity proceeds or investment values, must be treated as loss claims. Claims may not be cumulated by assignment to avoid application of the \$200 deductible provision. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employee may be treated as a gratuity. Any provider or member claims for covered services under a health maintenance organization contract, including a point-of-service contract, not paid under subsection 1 are included in this class. Obligations of an insolvent insurer arising out of reinsurance contracts are excluded from this subsection.

[2003, c. 202, §1 (AMD) .]

4. Unearned premiums and small loss claims. Claims under nonassessable policies for unearned premiums or other premium refunds and the first \$200 or loss excepted by the deductible provision in subsection 3, except that, if the receiver fails to prorate a premium due to the insurer based on a termination of coverage under this chapter, any resulting unearned premium must be paid to the insured under subsection 1 as an expense of the administration.

[2001, c. 88, §12 (AMD) .]

5. Residual classification. All other claims, including claims of the federal or any state or local government, not falling within other classes under this section. Claims, including those of any governmental body, for a penalty or forfeiture shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection 8.

[1969, c. 132, §1 (NEW) .]

6. Judgments. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it would have received in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

[1969, c. 132, §1 (NEW) .]

7. Interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes under subsections 1 through 6 from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the court's approval, may make reasonable classifications of claims for purpose of computing interest, may make approximate computations and may ignore certain classifications and time periods as de minimis.

[1969, c. 132, §1 (NEW) .]

8. Miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in subsection 7:

- A. The first \$50 of each claim in the classes under subsections 2 through 6 subordinated under this section; [1969, c. 132, §1 (NEW).]
- B. Claims subordinated by section 4380 (subordination of claims for noncooperation); [1969, c. 132, §1 (NEW).]
- C. Claims filed late; [1969, c. 132, §1 (NEW).]
- D. Portions of claims subordinated under subsection 5; and [1969, c. 132, §1 (NEW).]
- E. Claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant. [1969, c. 132, §1 (NEW).]

[1969, c. 132, §1 (NEW) .]

9. Preferred ownership claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in subsections 7 and 8.

[1969, c. 132, §1 (NEW) .]

10. Proprietary claims. The claims of stockholders or other owners of the insurer.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 2001, c. 88, §12 (AMD). 2003, c. 202, §1 (AMD).

§4380. SUBORDINATION OF CLAIMS FOR NONCOOPERATION

If an ancillary receiver, by whatever name called, in another state or foreign country fails to transfer to the domiciliary liquidator in this State any assets within his control other than special deposits, diminished only by the expenses, if any, of the ancillary receivership, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 4379, subsection 8. [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§4381. OFFSETS

1. In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection 2.

[1969, c. 132, §1 (NEW) .]

2. No offset shall be allowed in favor of any such person where:

- A. The obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise, as provided in section 4376, entitle him to share as a claimant in the assets of the insurer, or [1969, c. 132, §1 (NEW).]
- B. The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset, or [1969, c. 132, §1 (NEW).]

C. The obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon the subscription to the capital stock of a stock insurer. [1969, c. 132, §1 (NEW).]

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§4382. REPORT AND PETITION FOR ASSESSMENT

Within 3 years after the date of the entry of an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer, the superintendent may make and file his report and petition to the court setting forth: [1973, c. 585, §12 (AMD).]

1. The reasonable value of the assets of the insurer;

[1969, c. 132, §1 (NEW) .]

2. The liabilities of the insurer to the extent thus far ascertained by the superintendent;

[1973, c. 585, §12 (AMD) .]

3. The aggregate amount of the assessment, if any, which the superintendent deems reasonably necessary to pay all claims, the costs and expenses of the collection of the assessments and the costs and expenses of the delinquency proceedings in full; and

[1973, c. 585, §12 (AMD) .]

4. Any other information relative to the affairs or property of the insurer that the superintendent deems material.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4383. ORDER AND LEVY OF ASSESSMENT

1. Upon the filing and reading of the report and petition provided for in section 4382, the court, ex parte, may order the superintendent to assess all members or subscribers of the insurer who may be subject to such an assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceedings, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceedings in full. Any such order shall require the superintendent to assess each such member or subscriber for his proportion of the aggregate assessment, according to such reasonable classification of such members or subscribers and formula as may be made by the superintendent and approved by the court.

[1973, c. 585, §12 (AMD) .]

2. The court may order additional assessments upon the filing and reading of any amendment or supplement to the report and petition referred to in subsection 1, if such amendment or supplement is filed within 3 years after the date of the entry of the order of rehabilitation or liquidation.

[1969, c. 132, §1 (NEW) .]

3. After the entry of the order to levy and assess members or subscribers of an insurer referred to in subsections 1 and 2, the superintendent shall levy and assess members or subscribers in accordance with the order.

[1973, c. 585, §12 (AMD) .]

4. The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to any other provision of this Title, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this Title, except as to any policy which was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, in which event the assessment against any such policyholder shall be upon the basis of the minimum rate for such risk.

[1969, c. 132, §1 (NEW) .]

5. No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this Title.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4384. ASSESSMENT PRIMA FACIE CORRECT; NOTICE; PAYMENT; PROCEEDINGS TO COLLECT

1. Any assessment of a subscriber or member of an insurer made by the superintendent pursuant to the order of court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the superintendent under section 4383, subsection 1 shall be prima facie correct.

[1973, c. 585, §12 (AMD) .]

2. Each member or subscriber shall be notified of the amount of assessment to be paid by him by written notice mailed to the address of the member or subscriber last of record with the insurer. Failure of the member or subscriber to receive the notice so mailed, within the time specified therein or at all, shall be no defense in any proceeding to collect the assessment.

[1969, c. 132, §1 (NEW) .]

3. If any such member or subscriber fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the superintendent may obtain an order in the delinquency proceedings requiring the member or subscriber to show cause at a time and place fixed by the court why judgment should not be entered against such member or subscriber for the amount of the assessment together with all costs, and a copy of the order and a copy of the petition therefor shall be served upon the member or subscriber within the time and in the manner designated in the order.

[1973, c. 585, §12 (AMD) .]

4. If the subscriber or member after due service of a copy of the order and petition referred to in subsection 3 is made upon him:

A. Fails to appear at the time and place specified in the order, judgment shall be entered against him as prayed for in the petition; or [1969, c. 132, §1 (NEW) .]

B. Appears in the manner and form required by law in response to the order, the court shall hear and determine the matter and enter a judgment in accordance with its decision. [1969, c. 132, §1 (NEW) .]

5. The superintendent may collect any such assessment through any other lawful means.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4385. FEDERAL RECEIVERSHIP

1. Whenever in the superintendent's opinion liquidation of a domestic insurer or an alien insurer domiciled in this State would be facilitated by a federal receivership, and when any ground exists upon which the superintendent might petition the court for an order of rehabilitation or liquidation of the insurer under this chapter, or if such an order has already been entered, the superintendent may request another superintendent or other resident of another state to petition any appropriate federal district court for the appointment of a federal receiver. The superintendent may intervene in any such action to support or oppose the petition, and may accept appointment as the receiver if so designated. This chapter applies to the receivership except to the extent that the court determines that the insurance rehabilitation and liquidation laws of another state are applicable in any part. Upon the superintendent's motion, the courts of this State shall relinquish all jurisdiction over the insurer for purposes of rehabilitation or liquidation. No federal law governing proceedings in bankruptcy may be applied to proceedings under this section.

[1991, c. 828, §32 (AMD) .]

2. If he is appointed receiver under this section, the superintendent shall comply with requirements necessary to give him title to and control over the assets and affairs of the insurer.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 828, §32 (AMD) .

§4386. APPLICATION FOR APPROVAL

1. Insolvency; assets disbursed. Within 120 days of a final determination of insolvency of a company by a court of competent jurisdiction of this State, the receiver shall make application to the court for approval of a proposal to disburse assets out of the company's marshaled assets, from time to time as those assets become available, to the Maine Insurance Guaranty Association and to any similar organization in another state. The Maine Insurance Guaranty Association and any similar organizations in other states shall be referred to, collectively, as the associations.

[1981, c. 347, (NEW) .]

2. Proposals. The proposals shall at least include provisions for:

A. Reserving amounts for the payment of the expenses of administration and the claims falling within the priorities established in section 4379, subsections 1 and 2; [1981, c. 347, (NEW) .]

B. Disbursement of the assets marshaled to date and subsequent disbursements of assets as they become available; [1981, c. 347, (NEW) .]

C. Equitable allocation of disbursements to each of the associations entitled thereto; and [1981, c. 347, (NEW).]

D. The securing by the receiver from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the receiver the assets, and interest earned thereon, previously disbursed as may be required to pay claims as secured creditors and claims falling within the priorities established in section 4379, subsections 1 to 6, in accordance with those priorities. [1981, c. 347, (NEW).]

[1981, c. 347, (NEW) .]

3. Disbursements to associations. The receiver's proposal shall provide for disbursements to the associations in amounts at least equal to the payments made or to be made thereby for which the association could assert claims against the receiver and shall further provide that if the assets available for disbursement, from time to time, do not equal or exceed the amounts of the payments made or to be made by the associations, then disbursements shall be in the amount of available assets.

[1981, c. 347, (NEW) .]

4. Notice. Notice of the application shall be given to the associations in, and to the commissioners of insurance of, each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least 30 days prior to submission of the application to the court. Action on the application may be taken by the court provided the notice has been given and provided further that the receiver's proposal complies with subsection 2, paragraphs A and D.

[1981, c. 347, (NEW) .]

SECTION HISTORY

1981, c. 347, (NEW).

§4387. QUALIFIED FINANCIAL CONTRACTS

1. Qualified financial contracts. Notwithstanding any other provision of this chapter, including any other provision of this chapter permitting the modification of contracts, or other provision of law to the contrary, a person may not be stayed or prohibited from exercising:

A. A contractual right to cause the termination, liquidation, acceleration or closeout of obligations under or in connection with any netting agreement or qualified financial contract with an insurer because of:

(1) The insolvency, financial condition or default of the insurer at any time, if the right is enforceable under applicable law other than this chapter; or

(2) The commencement of a formal delinquency proceeding under this chapter; [2011, c. 107, §3 (NEW).]

B. Any right under a pledge, security, collateral, reimbursement or guarantee agreement or arrangement or any other similar security agreement or arrangement or other credit enhancement relating to one or more netting agreements or qualified financial contracts; [2011, c. 107, §3 (NEW).]

C. Subject to section 4381, subsection 2, any right to offset, set off or net out any termination value, payment amount or other transfer obligation arising under or in connection with one or more qualified financial contracts when the counterparty or its guarantor is organized under the laws of the United States or a state or a foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting; or [2011, c. 107, §3 (NEW).]

D. If a counterparty to a master netting agreement or a qualified financial contract with an insurer subject to a proceeding under this chapter terminates, liquidates, closes out or accelerates the agreement or contract, damages must be measured as of the date or dates of termination, liquidation, closeout or acceleration. The amount of a claim for damages is the actual direct compensatory damages calculated in accordance with subsection 6. [2011, c. 107, §3 (NEW) .]

[2011, c. 107, §3 (NEW) .]

2. Termination of contract. Upon termination of a netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a nondefaulting party to an insurer that is the subject of a delinquency proceeding under this chapter must be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any walkaway clause in the netting agreement or qualified financial contract. For purposes of this subsection, "walkaway clause" means a provision in a netting agreement or a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from one of the parties in accordance with its terms upon termination, liquidation or acceleration of the netting agreement or qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of the party's status as a nondefaulting party. Any limited 2-way payment or first method provision in a netting agreement or qualified financial contract with an insurer that has defaulted is considered to be a full 2-way payment or 2nd method provision as against the defaulting insurer. Any such property or amount, except to the extent it is subject to one or more secondary liens or encumbrances or rights of netting, offset or setoff, must be a general asset of the insurer.

[2011, c. 107, §3 (NEW) .]

3. Transfer of contract. In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall either:

A. Transfer to one party, other than an insurer subject to a delinquency proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including:

- (1) All rights and obligations of each party under each netting agreement and qualified financial contract; and
- (2) All property, including any guarantees or other credit enhancement, securing any claims of each party under each netting agreement and qualified financial contract; or [2011, c. 107, §3 (NEW) .]

B. Transfer none of the netting agreements, qualified financial contracts, rights, obligations or property referred to in paragraph A with respect to the counterparty and any affiliate of the counterparty.

[2011, c. 107, §3 (NEW) .]

[2011, c. 107, §3 (NEW) .]

4. Notice. If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, then the receiver must use its best efforts to notify any person who is a party to the netting agreements or qualified financial contracts of the transfer by noon, the receiver's local time, on the business day following the transfer. For purposes of this subsection, "business day" means a day other than a Saturday, Sunday or any day on which the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

[2011, c. 107, §3 (NEW) .]

5. Transfer prior to delinquency. Notwithstanding any other provision of this chapter and except as provided in this subsection, a receiver may not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract or any pledge, security, collateral or

guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract that is made before the commencement of a delinquency proceeding under this chapter. A transfer may be avoided under section 4375-A, subsection 1, paragraph A if the transfer was made with actual intent to hinder, delay or defraud the insurer, a receiver appointed for the insurer or existing or future creditors.

[2011, c. 107, §3 (NEW) .]

6. Rights of disaffirmance or repudiation. Disaffirmance or repudiation is governed by this subsection.

A. In exercising the rights of disaffirmance or repudiation of a receiver with respect to any netting agreement or qualified financial contract to which an insurer is a party, the receiver for the insurer shall either:

(1) Disaffirm or repudiate all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding; or

(2) Disaffirm or repudiate none of the netting agreements and qualified financial contracts referred to in subparagraph (1) with respect to the person or any affiliate of the person. [2011, c. 107, §3 (NEW) .]

B. Notwithstanding any other provision of this chapter, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding rehabilitation proceeding must be determined and either allowed or disallowed:

(1) As if the claim had arisen before the date of the filing of the petition for liquidation;

(2) If a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation; or

(3) As if the claim had arisen before the issuance of any order or the commencement of any summary proceeding under this chapter.

The amount of the claim is the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. "Actual direct compensatory damages" does not include punitive or exemplary damages, damages for lost profit or lost opportunity or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages used in the derivatives, securities or other market for the contract and agreement claims. [2011, c. 107, §3 (NEW) .]

[2011, c. 107, §3 (NEW) .]

7. Contractual right defined. "Contractual right," as used in this section, includes any right set forth in a rule or bylaw of a derivatives clearing organization as defined in the federal Commodity Exchange Act, a multilateral clearing organization as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, a national securities exchange, a national securities association, a securities clearing agency or a contract market designated under the federal Commodity Exchange Act, a derivatives transaction execution facility registered under the federal Commodity Exchange Act, or a board of trade as defined in the federal Commodity Exchange Act or in a resolution of the governing board thereof and any right, whether or not evidenced in writing, arising under statutory or common law, or under law merchant, or by reason of normal business practice.

[2011, c. 107, §3 (NEW) .]

8. Affiliates. This section does not apply to any persons who are affiliates of the insurer that is the subject of the proceeding.

[2011, c. 107, §3 (NEW) .]

9. Rights of counterparties. All rights of counterparties under this chapter apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

[2011, c. 107, §3 (NEW) .]

SECTION HISTORY

2011, c. 107, §3 (NEW).

Subchapter 2: SUMMARY PROCEEDINGS

§4401. SUMMARY PROCEEDINGS; SUPERINTENDENT'S CORRECTIVE ORDERS AUTHORIZED

1. If the superintendent determines after a hearing that any insurer has committed or engaged in, or is committing or engaging in, or is about to commit or engage in any act, practice or transaction that would subject it to formal delinquency proceedings under section 4351 to 4407, he may make and serve upon the insurer and other persons involved such orders, other than seizure orders under sections 4404 and 4405, as he deems reasonably necessary to correct, eliminate or remedy such conduct, condition or ground. Orders to cure impairment of capital or surplus of a domestic insurer are subject to sections 3423 and 3424.

[1973, c. 585, §12 (AMD) .]

2. If the superintendent believes that irreparable harm to the insurer or its policyholders, creditors or the public may occur unless his order is issued with immediate effect, he may make and serve his order without notice and before hearing, and shall simultaneously therewith serve upon the insurer and other persons involved the notice of hearing as required under subsection 3.

[1973, c. 585, §12 (AMD) .]

3. The superintendent's order and notice of hearing thereunder shall be served in such a manner as conforms with the notice provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

[1977, c. 694, §438 (RPR) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1977, c. 694, §438 (AMD).

§4402. -- APPEAL FROM SUPERINTENDENT'S ORDER

If the superintendent has issued a summary order before hearing as provided in section 4401, subsection 2, any person upon whom such order is served may waive the superintendent hearing and apply for any immediate judicial relief available under law and without first exhausting administrative remedies. Section 236 (appeal from superintendent) shall apply as to appeals from the superintendent's order made after hearing.

[1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4403. -- ENFORCEMENT, PENALTY

1. The superintendent may apply for and any Superior Court may grant such restraining orders, temporary and permanent injunctions and other orders as may be deemed necessary to enforce the superintendent's order.

[1973, c. 585, §12 (AMD) .]

2. Violation of any order of the superintendent issued under section 4401 by any person as to whom the order is in effect shall subject such person to a penalty of not to exceed \$10,000, to be collected in a civil action brought by the Attorney General in the name of the State of Maine. The Attorney General shall deposit all funds so collected with the Treasurer of State to the credit of the Insurance Division Regulatory Revolving Fund.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4404. -- SEIZURE UNDER COURT ORDER

1. Upon filing by the superintendent in any Superior Court of this State of his verified petition alleging any ground for a formal delinquency proceeding against an insurer under sections 4351 to 4385 and that the interests of the insurer's policyholders or creditors or the public will be jeopardized by delay, and setting forth the order deemed necessary by the superintendent, the court shall, ex parte and without notice or hearing, issue the requested order. The requested order may:

A. Direct the superintendent to take possession and control of all or part of the property, books, accounts and records of the insurer and the premises occupied by it for transaction of its business; and [1973, c. 585, §12 (AMD) .]

B. Until further order of court, enjoin the insurer and its officers, managers, agents and employees from removal, concealment or other disposition of its property, and from transaction of its business, except with the superintendent's written consent. [1973, c. 585, §12 (AMD) .]

[1973, c. 585, §12 (AMD) .]

2. The court's order shall be for such duration, specified in the order, as the court deems necessary to enable the superintendent to ascertain the insurer's condition. On motion of any party or on its own motion, the court may hold such hearings as it deems desirable after such notice as it deems appropriate, and extend or shorten the duration or modify the terms of the order. The court shall vacate the seizure order if the superintendent fails to commence a formal proceeding under sections 4351 to 4385 after reasonable opportunity to do so; and a seizure order is automatically vacated by issuance of the court's order pursuant to formal delinquency proceedings under such sections of this chapter.

[1973, c. 585, §12 (AMD) .]

3. Entry of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4405. -- SEIZURE UNDER THE SUPERINTENDENT'S ORDER

1. If it appears to the superintendent that the interests of policyholders, creditors or the public will be jeopardized by delay incident to requesting a court seizure order, then on any ground which would justify a court seizure order under section 4404, and without notice and without applying to the court, the superintendent may issue a seizure order which must contain a statement verified by him of the grounds of his action. As directed by the seizure order, the superintendent's representatives shall forthwith take possession and control of all or part of the property, books, accounts and records of the insurer, and of the premises occupied by the insurer for transaction of its business. The superintendent shall retain possession and control until the order is vacated or is replaced by an order of court pursuant to subsection 2 or pursuant to a formal proceeding under this chapter.

[1973, c. 585, §12 (AMD) .]

2. At any time after seizure under subsection 1 the insurer may apply to the Superior Court for Kennebec County or for the county in this State in which the insurer's principal office is located. The court shall thereupon order the superintendent to appear forthwith and shall thereafter proceed as if the order were a court seizure order issued under section 4404.

[1973, c. 585, §12 (AMD) .]

3. Every law enforcement officer of this State shall assist the superintendent in making and enforcing any such seizure, and every sheriff's and police department shall furnish him with such deputies, patrolmen or officers as are necessary for the purpose.

[1973, c. 585, §12 (AMD) .]

4. Entry of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4406. -- CONDUCT OF HEARINGS, BOTH ADMINISTRATIVE AND BY THE COURT, IN SUMMARY PROCEEDINGS

1. The superintendent shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing shall be public.

[1973, c. 585, §12 (AMD) .]

2. The court may hold all hearings in summary proceedings and judicial reviews thereof privately in chambers, and shall do so on request of the insurer proceeded against.

[1969, c. 132, §1 (NEW) .]

3. In all summary proceedings and judicial reviews thereof, all records of the insurer, other documents, and all insurance bureau files and court records and papers, so far as they pertain to or are part of the record of the summary proceedings, shall be and remain confidential except as necessary to obtain compliance

therewith, unless the court after hearing arguments by the parties in chambers shall order otherwise, or unless the insurer requests that the matter be made public. Until the court otherwise orders, all papers filed with the clerk of court shall be held by him in a confidential file.

[1973, c. 585, §12 (AMD) .]

4. If at any time it appears to the court that any person whose interest is or will be substantially affected by an order did not appear at the hearing and has not been served, the court may order that notice be given and the proceedings be adjourned to give such person opportunity to appear, on such terms as may be reasonable and just.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

§4407. -- PENALTY FOR REFUSAL TO DELIVER PROPERTY, ETC.

Any person having possession or custody of and refusing to deliver to the superintendent or his representative upon request any of the property, books, accounts, documents or other records of an insurer against which a seizure order or a summary order has been issued by the superintendent or by the court, as provided under sections 4401 to 4406, shall upon conviction thereof be subject to a fine of not over \$10,000 or imprisonment for less than one year, or by both such fine and imprisonment. [1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

Subchapter 3: MAINE INSURANCE GUARANTY ASSOCIATION

§4431. SHORT TITLE

This subchapter shall be known and may be cited as the Maine Insurance Guaranty Association Act. [1969, c. 561, (NEW) .]

SECTION HISTORY

1969, c. 561, (NEW).

§4432. PURPOSE

The purpose of this subchapter is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers. [1969, c. 561, (NEW) .]

SECTION HISTORY

1969, c. 561, (NEW).

§4433. SCOPE

1. Application. This subchapter shall apply only as to the following kinds of insurance:

A. Property insurance, as defined in section 705; [1969, c. 561, (NEW) .]

B. Surety insurance, as defined in section 706; [1969, c. 561, (NEW) .]

C. Casualty insurance, as defined in section 707; and [1969, c. 561, (NEW).]

D. Marine and transportation insurance, as defined in section 708, excluding wet marine insurance, as defined in section 708, subsection 2, but not excluding marine protection and indemnity insurance. [1989, c. 751, §1 (AMD).]

[1989, c. 751, §1 (AMD) .]

2. Exceptions. This subchapter shall not apply as to:

A. Contracts of reinsurance; [1969, c. 561, (NEW).]

B. Mortgage guaranty insurance; [1985, c. 279, §1 (AMD).]

C. Credit insurance, vendors single-interest insurance, collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction; [2001, c. 478, §1 (AMD); 2001, c. 478, §11 (AFF).]

D. Insurance contracts procured as surplus lines coverage pursuant to chapter 19; [1987, c. 707, §5 (AMD).]

E. Title insurance; [1989, c. 67, §1 (AMD).]

F. Financial guaranty insurance or other forms of insurance offering protection against investment risks; [2001, c. 478, §2 (AMD); 2001, c. 478, §11 (AFF).]

G. Contracts of workers' compensation excess insurance issued to workers' compensation self-insurers approved under former Title 39, section 23 or under Title 39-A, section 403 by any insurer after the effective date of this paragraph, or in the case of a contract that automatically renews, not later than one year after the effective date of this paragraph; [2001, c. 478, §3 (AMD); 2001, c. 478, §11 (AFF).]

H. Life, annuity, health or disability insurance; [2001, c. 478, §4 (NEW); 2001, c. 478, §11 (AFF).]

I. Insurance of warranties or service contracts, including insurance that provides for the repair, replacement or service of goods or property, or indemnification of repair, replacement or service; for the operational or structural failure of the goods or property due to a defect in materials, workmanship or normal wear and tear; or for reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits; [2001, c. 478, §4 (NEW); 2001, c. 478, §11 (AFF).]

J. A transaction or combination of transactions between a person, including affiliates of that person, and an insurer, including affiliates of that insurer, that involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; and [2001, c. 478, §4 (NEW); 2001, c. 478, §11 (AFF).]

K. Insurance provided by or guaranteed by a governmental entity. [2001, c. 478, §4 (NEW); 2001, c. 478, §11 (AFF).]

[2001, c. 478, §§1-4 (AMD); 2001, c. 478, §11 (AFF) .]

SECTION HISTORY

1969, c. 561, (NEW). 1985, c. 279, §1 (AMD). 1987, c. 707, §§3-6 (AMD). 1989, c. 67, §1 (AMD). 1989, c. 751, §1 (AMD). 1991, c. 885, §E32 (AMD). 1991, c. 885, §E47 (AFF). 2001, c. 478, §§1-4 (AMD). 2001, c. 478, §11 (AFF).

§4434. CONSTRUCTION

This subchapter shall be liberally construed to effect the purpose stated under section 4432, which shall constitute an aid and guide to interpretation. [1969, c. 561, (NEW).]

SECTION HISTORY

1969, c. 561, (NEW).

§4435. DEFINITIONS

As used in this subchapter, unless context otherwise requires: [1969, c. 561, (NEW).]

1. Account. "Account" means any one of the 3 accounts created by section 4436.

[1969, c. 561, (NEW) .]

1-A. Affiliate. "Affiliate" means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with an insolvent insurer on December 31st of the year immediately before the year in which the insurer becomes an insolvent insurer.

[1989, c. 751, §2 (NEW) .]

2. Association. "Association" means the Maine Insurance Guaranty Association created under section 4436.

[1969, c. 561, (NEW) .]

3. Board of directors. "Board of directors" means the board of directors of the association.

[1969, c. 561, (NEW) .]

4. Covered claim. "Covered claim" means an unpaid claim, including one for unearned premiums but excluding one for punitive damages, arising under and within the coverage and applicable limits of a policy of a kind of insurance referred to in section 4433 to which this subchapter applies issued by an insurer that becomes an insolvent insurer after May 9, 1970, and where:

A. The claimant or insured is a resident of this State at the time of the insured event; or [1969, c. 561, (NEW).]

B. The property from which the claim arises is permanently located in this State. [1969, c. 561, (NEW).]

"Covered claim" does not include any amount due any insurer, reinsurer, affiliate, insurance pool or underwriting association, as subrogation recoveries or otherwise, except that any payment made to the workers' compensation residual market pool pursuant to section 4438, subsection 1, paragraph A-1 must be included as a covered claim. "Covered claim" does not include any first-party claims by an insured whose net worth exceeds \$25,000,000 on December 31st of the year prior to the year in which the member insurer becomes an insolvent insurer. An insured's net worth on that date is deemed to include the aggregate net worth of the insured and all its subsidiaries as calculated on a consolidated basis.

[2001, c. 478, §5 (AMD); 2001, c. 478, §11 (AFF) .]

5. Insolvent insurer. "Insolvent insurer" means a member insurer:

A. Authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred; and [1995, c. 289, §13 (AMD).]

B. Against whom a final order of liquidation has been entered with a finding of insolvency by a court of competent jurisdiction. [2001, c. 478, §6 (AMD); 2001, c. 478, §11 (AFF).]

Effective July 1, 1995, the workers' compensation residual market pool, as created by the Bureau of Insurance Rules, Chapter 440, is deemed an insolvent insurer.

[2001, c. 478, §6 (AMD); 2001, c. 478, §11 (AFF) .]

6. Member insurer. "Member insurer" means any authorized insurer that writes any kind of insurance to which this subchapter applies and that is not a risk retention group as defined in section 6093, subsection 13. If an insurer is authorized at the time of an insolvency and subsequently is approved to withdraw its license authority for the kinds of insurance covered by any account to which claims relating to the insolvency are allocated, the withdrawn insurer shall continue to be a member of each account solely for purposes of assessments relating to claims resulting from the insolvency until these claims are paid or otherwise extinguished.

[2013, c. 238, Pt. E, §2 (AMD) .]

7. Net direct written premiums. "Net direct written premiums" means direct gross premiums written on insurance policies to which this subchapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers or premiums written through the United States Government Flood Insurance Program.

[1999, c. 790, Pt. A, §29 (AMD) .]

8. Insurer. "Insurer" means any insurer as defined in section 4.

[1981, c. 484, §1 (AMD) .]

9. Line of credit. "Line of credit" means an irrevocable stand-by commitment whereby the association or member insurer and a qualified financial institution or group of qualified financial institutions enter into a formal and binding contract in which the qualified financial institution or group of qualified financial institutions agree to lend a certain amount of money within a stated period of time. The terms and conditions of any line of credit shall be established by rules adopted jointly by the Bureau of Financial Institutions and the Bureau of Insurance.

[1989, c. 67, §4 (NEW); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF) .]

9-A. Person. "Person" means an individual or legal entity, including a governmental entity.

[2001, c. 478, §7 (NEW); 2001, c. 478, §11 (AFF) .]

10. Qualified financial institution. "Qualified financial institution" means one which is insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or a successor federal deposit insurance agency or agencies, and has an equity capital to assets ratio of 6.5% or greater, as determined in accordance with generally accepted accounting principles.

[1989, c. 67, §4 (NEW) .]

SECTION HISTORY

1969, c. 561, (NEW). 1973, c. 625, §159 (AMD). 1979, c. 658, §§3,4 (AMD). 1981, c. 484, §1 (AMD). 1985, c. 279, §2 (AMD). 1987, c. 769, §B5 (AMD). 1989, c. 67, §§2-4 (AMD). 1989, c. 751, §§2,3 (AMD). 1991,

c. 885, §E33 (AMD). 1991, c. 885, §E47 (AFF). 1995, c. 289, §§12,13 (AMD). 1999, c. 790, §A29 (AMD). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2001, c. 478, §§5-7 (AMD). 2001, c. 478, §11 (AFF). 2013, c. 238, Pt. E, §2 (AMD).

§4436. CREATION OF THE ASSOCIATION

There is created a nonprofit unincorporated legal entity to be known as the Maine Insurance Guaranty Association. All insurers defined as member insurers in section 4435 shall be and remain members of the association as a condition of their authority to transact insurance in this State. The association shall perform its functions under a plan of operation established and approved under section 4439 and shall exercise its powers through a board of directors established under section 4437. For purposes of administration and assessment, the association shall be divided into 3 separate accounts: [1969, c. 561, (NEW).]

1. The workers' compensation insurance account;

[1987, c. 707, §7 (AMD) .]

2. The automobile insurance account; except those insurers writing only automobile physical damage insurance, which shall be included in the all other insurance account; and

[1969, c. 561, (NEW) .]

3. The account for all other insurance to which this subchapter applies.

[1969, c. 561, (NEW) .]

SECTION HISTORY

1969, c. 561, (NEW). 1987, c. 707, §7 (AMD).

§4437. BOARD OF DIRECTORS

The board of directors of the association must consist of not less than 7 persons serving terms as established in the plan of operation, and not less than 3 of the persons must represent members of the association that are domiciled in the State. The members of the board must be selected by member insurers subject to the approval of the superintendent. A member insurer serving on the board must resign if the member insurer ceases writing new insurance business in the State. Vacancies on the board must be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the superintendent. [2009, c. 116, §1 (AMD).]

In approving selections to the board, the superintendent shall consider among other things whether all member insurers are fairly represented. [1973, c. 585, §12 (AMD).]

Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors. [1969, c. 561, (NEW).]

SECTION HISTORY

1969, c. 561, (NEW). 1973, c. 585, §12 (AMD). 1973, c. 625, §160 (AMD). 1985, c. 279, §3 (AMD). 2009, c. 116, §1 (AMD).

§4438. POWERS AND DUTIES OF THE ASSOCIATION

1. Powers and duties. The association shall:

A. Be obligated to pay covered claims existing prior to the determination of the insolvency or arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination of insolvency, or before the insured replaces the policy or causes its cancellation, if within 30 days of the determination. The obligation must be satisfied by paying to the claimant:

- (1) Except as provided in this paragraph, the full amount of a covered claim for benefits, including interest and all penalties payable to a claimant under the Maine Workers' Compensation Act of 1992, or unearned premium under workers' compensation insurance coverage;
- (2) An amount not exceeding \$25,000 per policy for a covered claim for the return of an unearned premium; or
- (3) An amount not exceeding \$300,000 per claim for all other covered claims.

In no event is the association obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. The association shall pay only that amount of unearned premium in excess of \$50. Notwithstanding any other provisions of this subchapter, a covered claim does not include any claim filed with the association after the earlier of 24 months after the date of the order of liquidation or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. The association, in its discretion, may accept a late filed claim as a covered claim when the claimant demonstrates good cause. The demonstration of good cause by a claimant includes showing that the existence of the claim was not known to the claimant prior to the bar date and that the claimant filed the claim within 60 days of learning of the claim; [2009, c. 129, §1 (AMD); 2009, c. 129, §13 (AFF).]

A-1. Pay to the workers' compensation residual market pool the sum of \$1,538,039 on or before February 15th, May 15th, August 15th and November 15th of each year beginning August 15, 1996 and continuing for 40 consecutive calendar quarters. Each payment made under this paragraph must be treated as the payment of a covered claim except that the association may not seek reimbursement or recoupment from any source other than by assessments to member insurers. Member insurers are allowed to recognize assessments made pursuant to this paragraph in rates and premiums as provided in section 4447; [1995, c. 289, §14 (NEW).]

B. Be deemed the insurer to the extent of its obligation on covered claims, and to such extent the association shall have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent; [1969, c. 561, (NEW).]

C. Allocate claims paid and expenses incurred among the 3 accounts separately; and assess member insurers separately for each account in amounts necessary to pay:

- (1) The obligations of the association under paragraph A, subsequent to an insolvency, the obligations of the accounts for shortfalls under section 4440-A, and for preinsolvency assessments, if required by section 4440, subsection 3, paragraph B, and the obligations of the association under paragraph A-1;
- (2) The expenses of handling covered claims subsequent to an insolvency;
- (3) The cost of examinations under section 4445; and
- (4) Other expenses authorized by this subchapter; [1995, c. 289, §15 (AMD).]

D. Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims. The association shall pay covered claims in any reasonable order, including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested; [1985, c. 279, §5 (AMD).]

E. Notify such persons as the superintendent directs under section 4441, subsection 2, paragraph A; [1973, c. 585, §12 (AMD).]

F. Handle claims through its employees or through one or more insurers licensed in the State or other persons using employees licensed as adjusters in the State designated as servicing facilities. Designation of a servicing facility is subject to the approval of the superintendent, but designation of a member insurer as a servicing facility may be declined by such insurer; [2009, c. 129, §2 (AMD); 2009, c. 129, §13 (AFF).]

G. Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association; [1969, c. 561, (NEW).]

H. Pay the other expenses of the association authorized by this subchapter; and [2009, c. 129, §3 (AMD); 2009, c. 129, §13 (AFF).]

I. Pay all penalties, sanctions, forfeitures and fines provided for under the Maine Workers' Compensation Act of 1992 including penalties payable to the Workers' Compensation Board and the General Fund, except the penalty provided for in Title 39-A, section 359, subsection 2. No penalty, fine, forfeiture, attorney's fees or other sanction may be imposed on the association if:

(1) The Workers' Compensation Board finds that the association was prevented from complying with the Maine Workers' Compensation Act of 1992 because the association was unable in the exercise of reasonable diligence to obtain the records of the insolvent insurer; or

(2) The Workers' Compensation Board finds that the association was prevented from complying with the Maine Workers' Compensation Act of 1992 because of circumstances beyond its reasonable control. [2009, c. 129, §4 (NEW); 2009, c. 129, §13 (AFF).]

[2009, c. 129, §§1-4 (AMD); 2009, c. 129, §13 (AFF) .]

2. Permission. The association may:

A. Employ or retain such persons as are necessary to handle claims and perform other duties of the association; [1969, c. 561, (NEW).]

B. Borrow funds necessary to effect the purposes of this subchapter in accord with the plan of operation; [1969, c. 561, (NEW).]

C. Sue or be sued and may intervene as a party before any court in this State that has jurisdiction over an insolvent insurer as defined by this subchapter; [2001, c. 478, §9 (AMD); 2001, c. 478, §11 (AFF).]

D. Negotiate and become a party to such contracts as are necessary to carry out the purpose of this subchapter; [1969, c. 561, (NEW).]

E. Perform such other acts as are necessary or proper to effectuate the purpose of this subchapter; [1969, c. 561, (NEW).]

F. Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year. [1969, c. 561, (NEW).]

[2001, c. 478, §9 (AMD); 2001, c. 478, §11 (AFF) .]

SECTION HISTORY

1969, c. 561, (NEW). 1973, c. 585, §12 (AMD). 1981, c. 17, (AMD). 1985, c. 279, §§4,5 (AMD). 1987, c. 707, §8 (AMD). 1989, c. 67, §5 (AMD). 1989, c. 751, §4 (AMD). 1995, c. 289, §§14,15 (AMD). 2001, c. 478, §§8-9 (AMD). 2001, c. 478, §11 (AFF). 2005, c. 603, §1 (AMD). 2009, c. 129, §§1-4 (AMD). 2009, c. 129, §13 (AFF).

§4439. PLAN OF OPERATION

1. Submission.

A. The association shall submit to the superintendent a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the superintendent. [1973, c. 585, §12 (AMD).]

B. If the association fails to submit a suitable plan of operation within 90 days following May 9, 1970 or if at any time thereafter the association fails to submit suitable amendments to the plan, the superintendent shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate this subchapter. Such rules shall continue in force until modified by the superintendent or superseded by a plan submitted by the association and approved by the superintendent. [1973, c. 625, §161 (AMD).]

[1973, c. 625, §161 (AMD) .]

2. Complying. All member insurers shall comply with the plan of operation.

[1969, c. 561, (NEW) .]

3. Plan. The plan of operation shall:

A. Establish the procedures whereby all the powers and duties of the association under section 4438 will be performed. [1969, c. 561, (NEW).]

B. Establish procedures for handling assets of the association. [1969, c. 561, (NEW).]

C. Establish the amount and method of reimbursing members of the board of directors under section 4437. [1969, c. 561, (NEW).]

D. Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator. [1969, c. 561, (NEW).]

E. Establish regular places and times for meetings of the board of directors. [1969, c. 561, (NEW).]

F. Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors. [1969, c. 561, (NEW).]

G. Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the superintendent within 30 days after the action or decision. [1973, c. 585, §12 (AMD).]

H. Establish the procedures whereby selections for the board of directors will be submitted to the superintendent. [1973, c. 585, §12 (AMD).]

I. Contain additional provisions necessary or proper for the execution of the powers and duties of the association. [1969, c. 561, (NEW).]

[1973, c. 585, §12 (AMD) .]

4. Provisions. The plan of operation may provide that any or all powers and duties of the association, except those under section 4438, subsection 1, paragraph C, and section 4438, subsection 2, paragraph B, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of the association, or its equivalent, in 2 or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the superintendent, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this subchapter.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 561, (NEW). 1973, c. 585, §12 (AMD). 1973, c. 625, §161 (AMD).

§4440. ASSESSMENT OF MEMBER INSURERS

1. Proportion. The assessments of each member insurer provided for under section 4438 must be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the same calendar year on the kinds of insurance in the account, except that assessments to cover a shortfall in any account are determined in accordance with section 4440-A. In the case of a withdrawn insurer, the average of its net direct written premium for the 5 calendar years prior to withdrawal, excluding premium on business written as a workers' compensation residual market servicing carrier for assessments made on or after January 1, 1996, must be used as its assessment base for any year following withdrawal in which the insurer has no net direct written premium.

[1995, c. 289, §16 (AMD) .]

2. Notification. Each member insurer shall be notified of the assessment not later than 30 days before it is due.

[1969, c. 561, (NEW) .]

3. Limitation; types of assessments. Assessments shall be made as follows.

A. Each member insurer may be assessed in any calendar year on any account an amount up to 2% of that member insurer's net direct written premiums for the next preceding calendar year on the kinds of insurance in the account for purposes of paying claims and expenses of that account. [1989, c. 67, §7 (NEW).]

B. To the extent that the maximum 2% has not been assessed, an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph shall be assessed when immediately necessary for the payment of claims and expenses. Any amount drawn by the association under any line of credit shall be considered a payment toward the member insurer's obligation provided for in this section. The maximum line of credit or preinsolvency assessment for each account shall be as follows:

Account	Maximum
Workers' compensation	\$2,000,000
Automobile	\$1,700,000

All other

\$1,300,000

(1) The association shall obtain a line of credit for the benefit of each account, in an amount not to exceed the applicable maximum to ensure the immediate availability of funds for purposes of future claims and expenses attributable to an insurer insolvency in that account. The line of credit shall be obtained from qualified financial institutions. At no time may a qualified financial institution participate in the line of credit in excess of 20% of its equity capital. The line of credit shall provide for a 30-day notice of termination or nonrenewal to the superintendent and the association and shall provide funding to the association within one business day of receipt of written notice from the superintendent of an insolvent insurer in that account as defined in section 4435, subsection 5. Each member insurer upon receipt of notice from the association shall make immediate payment for its proportionate share of the amount borrowed based on the premium for the preceding calendar year. The line of credit provided for in this paragraph shall be subject to prior review and approval by the superintendent at the time of origination and any subsequent renewal.

(2) If the association cannot obtain a line of credit, a member insurer may obtain a line of credit from a qualified financial institution or may extend a line of credit itself directly to and for the benefit of the member insurer's account by submitting to the association a duly authorized and executed line of credit agreement providing that the member insurer shall provide funding to the association under the line of credit within one business day of receipt of a written notice from the superintendent of an insolvent insurer as defined in section 4435, subsection 5, and receipt of a written request from the association for a drawdown under the line of credit. The line of credit agreement shall be subject to prior review and approval by the superintendent at the time of origination and any subsequent renewal. It shall include such commercially reasonable provisions as the association or the superintendent may deem advisable, including a provision that the line of credit is irrevocable or for a stated period of time and provides for a 30-day notice to the association and the superintendent that the line is being terminated or not renewed. Any line of credit issued under this paragraph may be replaced with another line of credit and the existing line of credit shall be released by the association once a substitute line of credit has been provided or the assessment provided for in this paragraph has been paid.

(3) If a line of credit is not given as provided for in subparagraph (2), the member insurer shall be responsible for payment of an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph which shall be paid into a preinsolvency assessment fund in each account. Funds in each account shall only be used for the payment of claims and expenses of an insolvent insurer in that account.

(4) All materials and information submitted or considered under this paragraph shall be matters of public record. [1989, c. 67, §7 (NEW).]

[1989, c. 67, §7 (RPR) .]

4. Exemptions. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. It is a condition of any deferral that during the period of deferment no dividends may be paid by the member insurer to its shareholders or policyholders. A deferred assessment is paid when payment will not reduce capital or surplus below required levels, and the association shall then refund to its other member insurers an amount equal to the deferred assessment in the proportions corresponding to the increases in their assessments by virtue of that deferment.

[1985, c. 279, §6 (AMD) .]

5. Set off. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer, if they are chargeable to the account for which the assessment is made.

[1969, c. 561, (NEW) .]

6. Delinquency. Delinquent assessments, except as provided in subsection 4, shall bear interest at the rate of 8% per annum, computed from the due date of the assessment.

[1969, c. 561, (NEW) .]

SECTION HISTORY

1969, c. 561, (NEW). 1985, c. 279, §6 (AMD). 1989, c. 67, §§6,7 (AMD). 1995, c. 289, §16 (AMD).

§4440-A. SPECIAL ASSESSMENT

1. Special assessment. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the shortfall shall be assessed as an obligation of the other accounts of the association, with each member insurer's assessment to be in the proportion that its net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the accounts to be assessed bears to the total net direct written premiums of all member insurers for the same calendar year on the kinds of insurance in those accounts. The total of assessments against a member insurer under this section and section 4440 for any account in any one calendar year shall not exceed 2% of that member's net direct written premium on the kinds of insurance written in that account for the next preceding calendar year.

[1989, c. 67, §8 (NEW) .]

2. Limit on assessment. Subject to the 2% limitation, an assessment made under this section may not exceed 5% of the average of a member insurer's net income of the 3 years prior to the year in which the assessment is made for any member insurer:

A. That has surplus of less than \$15,000,000 and either a ratio of total net direct written premium to total surplus greater than 2 or net income of less than \$250,000 for the year preceding the assessment. For purposes of this subsection, "net income" means the sum of underwriting income and investment income, net of dividends to policyholders and federal and foreign income taxes incurred, as reported on the insurer's annual statement filed with the superintendent. "Total surplus" means surplus as regards policyholders, as reported on the insurer's annual statement filed with the superintendent; or [1995, c. 289, §17 (AMD) .]

B. That has a surplus of less than \$15,000,000 and has fewer than 3,000 policyholders. [1995, c. 289, §17 (AMD) .]

[1995, c. 289, §17 (AMD) .]

3. Repealer.

[1989, c. 67, §8 (NEW); 1989, c. 751, §5 (RP) .]

4. Notification to Legislature. Within 7 days after the board of directors votes to levy an assessment under this section, the chair of the board of directors shall notify the chairs of the legislative committee having jurisdiction over insurance matters that the association has voted to make such an assessment. The notification must:

A. Be in writing; and [1989, c. 751, §6 (NEW) .]

B. Include the total amount to be assessed against each account and the name of the account to which the assessed funds will be credited. [1989, c. 751, §6 (NEW).]

[1989, c. 751, §6 (NEW) .]

SECTION HISTORY

1989, c. 67, §8 (NEW). 1989, c. 641, §§1,2 (AMD). 1989, c. 751, §§5,6 (AMD). 1995, c. 289, §17 (AMD).

§4440-B. ASSESSMENT OF EXCESS INSURERS **(REPEALED)**

SECTION HISTORY

1989, c. 67, §8 (NEW). MRSA T. 24-A, §4440-B (RP).

§4441. DUTIES AND POWERS OF THE SUPERINTENDENT

1. Duties and powers. The superintendent shall:

A. Notify the association of the existence of an insolvent insurer not later than 3 days after the superintendent receives notice of the determination of the insolvency. The association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member insurer which is domiciled in this State at the same time that the complaint is filed with a court of competent jurisdiction; and [1987, c. 707, §9 (AMD).]

B. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer. [1969, c. 561, (NEW).]

[1987, c. 707, §9 (AMD) .]

2. Permission. The superintendent may:

A. Require that the association notify the insureds of the insolvent insurer and any other interested parties of the order of liquidation with a finding of insolvency and of their rights under this subchapter. Such notifications must be by mail at their last known addresses, where available, but if required information for notification by mail is not available, notice by publication in a newspaper of general circulation in this State is sufficient. Any notification given under this paragraph must prominently display the date by which all claims must be filed with the association. [2001, c. 478, §10 (AMD); 2001, c. 478, §11 (AFF).]

B. Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this State of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. [1969, c. 561, (NEW).]

C. Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily. [1969, c. 561, (NEW).]

[2001, c. 478, §10 (AMD); 2001, c. 478, §11 (AFF) .]

SECTION HISTORY

1969, c. 561, (NEW). 1973, c. 585, §12 (AMD). 1987, c. 707, §9 (AMD). 2001, c. 478, §10 (AMD). 2001, c. 478, §11 (AFF).

§4442. EFFECT OF PAID CLAIMS

Any person recovering on a covered claim under this subchapter shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this subchapter shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payment of claims by the association shall not operate to reduce the liability of insureds to the receiver, liquidator or statutory successor for unpaid assessments. [1969, c. 561, (NEW).]

The receiver, liquidator or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this subchapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses. [1969, c. 561, (NEW).]

The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association, which shall preserve the rights of the association against the assets of the insolvent insurer. [1969, c. 561, (NEW).]

SECTION HISTORY

1969, c. 561, (NEW).

§4443. NONDUPLICATION OF RECOVERY

1. Insurance policy. Any person having a claim against an insurer under any provision in an insurance policy, other than that of an insolvent insurer, which is also a covered claim, shall be required to exhaust first the person's right under the policy. Any amount otherwise payable on a covered claim under this subchapter shall be reduced by the amount of any recovery under the insurance policy.

[1987, c. 707, §10 (NEW) .]

2. Governmental insurance. Any person having a claim or legal right of recovery under any governmental insurance, which is also a covered claim, shall be required to exhaust first that person's right under that insurance. Any amount payable on a covered claim under this subchapter shall be reduced by the amount of any recovery under that insurance.

[1987, c. 707, §10 (NEW) .]

3. Insurance guaranty association. Any person having a claim which may be recovered from more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that, if it is a first party claim for damage to property with a permanent location, that person shall seek recovery first from the association of the location of the property, and, if it is a workers' compensation claim, that person shall seek recovery first from the association of the residence of the claimant. Any recovery under this subchapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

[1987, c. 707, §10 (NEW) .]

SECTION HISTORY

1969, c. 561, (NEW). 1987, c. 707, §10 (RPR).

§4444. PREVENTION OF INSOLVENCIES

To aid in the detection and prevention of insurer insolvencies: [1969, c. 561, (NEW).]

1. Notification. The board of directors, upon majority vote, shall notify the superintendent of any information indicating that any member insurer may be insolvent or in a financial condition hazardous to policyholders or the public.

[1973, c. 585, §12 (AMD) .]

2. Examination. The board of directors may, upon majority vote, request that the superintendent order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to policyholders or the public. Within 30 days of the receipt of such request, the superintendent shall begin such examination. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall the examination report, or any portion thereof, be released to the board of directors prior to its release to the public, but this shall not preclude the superintendent from complying with subsection 3. The superintendent shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the superintendent but shall not be open to public inspection prior to the release of the examination report, or part thereof to the public, in accordance with section 227.

[1973, c. 585, §12 (AMD) .]

3. Report. The superintendent shall report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to policyholders or the public.

[1973, c. 585, §12 (AMD) .]

4. Recommendations. The board of directors may, upon majority vote, make reports and recommendations to the superintendent upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents or be open to public inspection.

[1973, c. 585, §12 (AMD) .]

5. Prevention. The board of directors may, upon majority vote, make recommendations to the superintendent for the detection and prevention of insurer insolvencies.

[1973, c. 585, §12 (AMD) .]

6. Report. The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the superintendent.

[1987, c. 707, §11 (AMD) .]

SECTION HISTORY

1969, c. 561, (NEW). 1973, c. 585, §12 (AMD). 1985, c. 279, §7 (AMD). 1987, c. 707, §11 (AMD).

§4445. EXAMINATION OF THE ASSOCIATION

The association shall be subject to examination and regulation by the superintendent. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the superintendent. [1973, c. 585, §12 (AMD).]

The association is also subject to audit, enforcement and monitoring by the Workers' Compensation Board with respect to workers' compensation claims as provided for in the Maine Workers' Compensation Act of 1992. Notwithstanding any other provision of law, the association is liable for the payment of any compensation, interest, penalty or other obligation determined to be due by the Workers' Compensation Board as provided for in the Maine Workers' Compensation Act of 1992. The Workers' Compensation Board may not assess the association penalties for the acts or omissions of insolvent insurers. [2005, c. 603, §2 (NEW).]

SECTION HISTORY

1969, c. 561, (NEW). 1973, c. 585, §12 (AMD). 2005, c. 603, §2 (AMD).

§4446. TAX EXEMPTION

The association shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions except taxes levied on real or personal property. [1969, c. 561, (NEW).]

SECTION HISTORY

1969, c. 561, (NEW).

§4447. RECOGNITION OF ASSESSMENT IN RATES

The rates and premiums charged for insurance policies to which this subchapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer. [1969, c. 561, (NEW).]

SECTION HISTORY

1969, c. 561, (NEW).

§4448. IMMUNITY

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the superintendent or his representatives for any action taken by them in the performance of their powers and duties under this subchapter. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 561, (NEW). 1973, c. 585, §12 (AMD).

§4449. STAY OF PROCEEDINGS; REOPENING OF DEFAULT JUDGMENTS

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this State shall be stayed for 60 days from the date the insolvency is determined, and may be stayed by the Superior Court for additional time solely as is deemed necessary to permit proper defense by the association of all pending causes of action. The association shall provide to the superintendent a copy of any such request for stay and supporting documents filed with the court. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such

judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits. [1985, c. 279, §8 (AMD).]

The liquidator, receiver or statutory successor of an insolvent insurer covered by this subchapter shall permit access by the board of directors, or its authorized representative, to those records of the insolvent insurer which are necessary for the board to carry out its functions under this subchapter with regard to covered claims. The liquidator, receiver or statutory successor shall provide the board or its representative with copies of these records upon request by the board and at the expense of the board. [1987, c. 707, §12 (NEW).]

This section does not authorize a stay of proceedings before the Workers' Compensation Board, or of proceedings in Superior Court to enforce orders of the Workers' Compensation Board. A stay of workers' compensation proceedings before the Workers' Compensation Board or the Superior Court may be granted if otherwise authorized by law, provided that good cause for a stay exists and that reasonable diligence was exhibited by the insurer, the employer, the association and their counsel to proceed with the proceeding prior to the insolvency. [1989, c. 67, §9 (NEW); 1991, c. 885, Pt. D, §2 (AMD).]

SECTION HISTORY

1969, c. 561, (NEW). 1985, c. 279, §8 (AMD). 1987, c. 707, §12 (NEW). 1987, c. 707, §12 (AMD). 1989, c. 67, §9 (AMD). 1991, c. 885, §D2 (AMD).

§4450. TERMINATION OF ASSOCIATION

The superintendent shall by order terminate the operation of the association as to any kind of insurance with respect to which he has found, after notice and hearing, that there is in effect a statutory plan of the United States Government to avoid excessive delay or financial loss to claimants or policyholders because of insurer insolvency and which provides for protection and benefits to residents of this State not materially less favorable than provided under this subchapter. Such order for termination shall continue the operation of this subchapter with respect to prior insurer insolvencies not covered by such plan. The order shall also provide for a proportionate distribution of the assets of the association to insurers which will cease to be members of the association on the effective date of the order. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 561, (NEW). 1973, c. 585, §12 (AMD).

§4451. ADVERTISING RESTRICTIONS

Any person who makes, publishes or circulates, or causes to be made, published or circulated, any statement which uses the existence of the association for the purpose of sales, solicitation or inducement to purchase any form of insurance shall be deemed to have committed an unfair trade practice which is subject to a cease and desist order pursuant to section 2165 and to any applicable penalty provided by this Title. [1985, c. 279, §9 (NEW).]

SECTION HISTORY

1985, c. 279, §9 (NEW).

§4452. REPORT TO LEGISLATURE

At the end of each calendar year, the association shall submit a report of its activities to the joint standing committee of the Legislature having jurisdiction over banking and insurance matters. The report must include the amount of assessments made against each account, the name of the insolvent insurer to which the assessments are attributable and the amount of funds borrowed, if any, by the association and the repayment date of any loan. [1989, c. 751, §7 (NEW).]

SECTION HISTORY

1989, c. 751, §7 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 127th Maine Legislature and is current through October 1, 2016. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.